

1 SENATE BILL NO. 336

2 INTRODUCED BY L. LARSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE COAL BED METHANE OPERATIONS
5 RECLAMATION ACT; DEFINING TERMS; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO
6 ADOPT RULES; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADMINISTER THE
7 ACT; ESTABLISHING OPERATING PERMITS, FEES, AND REQUIREMENTS; PROVIDING SPECIFIC
8 RECLAMATION REQUIREMENTS; MANDATING THE FILING OF PERFORMANCE BONDS; REQUIRING AN
9 ANNUAL REPORT OF ACTIVITIES; PROVIDING A PROCESS FOR A SUCCESSOR OPERATOR;
10 ESTABLISHING CONDITIONS UNDER WHICH THE DEPARTMENT MAY PERFORM RECLAMATION OR
11 CONTRACT FOR RECLAMATION; ESTABLISHING CONDITIONS FOR SUSPENSION OF A PERMIT;
12 ALLOWING AMENDMENTS TO OPERATING PERMITS; ESTABLISHING REASONS FOR DENIAL OF AN
13 OPERATING PERMIT; AUTHORIZING ADMINISTRATIVE REMEDIES AND APPEALS; AUTHORIZING
14 ENFORCEMENT AND PENALTIES; ALLOWING FOR ABATEMENT OF ENVIRONMENTAL EMERGENCIES;
15 AUTHORIZING MORE STRINGENT LOCAL STANDARDS; AND AMENDING SECTIONS 70-31-102 AND
16 75-1-110, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 NEW SECTION. **Section 1. Short title.** [Sections 1 through 27] may be cited as "The Coal Bed
21 Methane Operations Reclamation Act".

22
23 NEW SECTION. **Section 2. Intent -- findings -- policy and purpose.** (1) The legislature, mindful of
24 its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted
25 The Coal Bed Methane Operations Reclamation Act. It is the legislature's intent that the requirements of
26 [sections 1 through 27] provide adequate remedies for the protection of the environmental life support system
27 from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural
28 resources.

29 (2) It is the policy of this state to provide adequate remedies for the protection of the environmental life
30 support system from degradation and provide adequate remedies to prevent unreasonable depletion and

1 degradation of natural resources.

2 (3) It is the purpose of [sections 1 through 27]:

3 (a) to vest in the department the authority to review new coal bed methane operating permits and
4 reclamation plans and either approve or disapprove those permits and plans and to exercise general
5 administration and enforcement of [sections 1 through 27];

6 (b) to vest in the board the authority to adopt rules;

7 (c) to ensure that adequate information is available on areas proposed for coal bed methane drilling and
8 reclamation so that reclamation plans may be properly formulated to accommodate areas that are suitable for
9 coal bed methane drilling.

10 (4) [Sections 1 through 27] are an exercise of the general police power to provide for the health and
11 welfare of the people.

12

13 **NEW SECTION. Section 3. Definitions.** When used in [sections 1 through 27], unless a different
14 meaning clearly appears from the context, the following definitions apply:

15 (1) "Abandoned" means an operation in which an operator is no longer conducting prospecting or other
16 coal bed methane operations and for which the department determines that the operation will not continue or
17 resume.

18 (2) "Adjacent area" means the area outside the operations or permit area where a resource or
19 resources, determined in the context in which the term is used, are or could reasonably be expected to be
20 adversely affected by proposed coal bed methane operations, including aquifer drawdowns.

21 (3) "Affected land" means the surface area or subsurface area affected by the coal bed methane project,
22 including:

23 (a) land or water affected by prospecting or the construction of any facilities, drill pads, roads, pipelines,
24 compressor stations, impoundments, land application and disposal operations, or other improvements or
25 operations infrastructure;

26 (b) all activities necessary and incidental to the reclamation of the coal bed methane operations.

27 (4) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains
28 or stores water and transmits it from one point to another in quantities that permit or have the potential to permit
29 economic development as a water source.

30 (5) "Board" means the board of environmental review provided for in 2-15-3502.

- 1 (6) "Coal bed methane operation" or "operation" means:
- 2 (a) all of the premises, facilities, roads, and equipment used in the process of extracting natural gas
- 3 from a coal bed and reclaiming a designated coal bed methane area; and
- 4 (b) all activities, including excavation incident to operations, or prospecting for the purpose of
- 5 determining the location, quality, or quantity of a coal bed methane deposit.
- 6 (7) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with
- 7 grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and
- 8 other similar crops.
- 9 (8) "Department" means the department of environmental quality provided for in 2-15-3501.
- 10 (9) "Developed water resources" means land used for storing water for beneficial uses, such as
- 11 stockponds, irrigation, fire protection, flood control, and water supply.
- 12 (10) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the
- 13 immediate watershed or in response to the melting of snow or ice and that is always above the local water table.
- 14 (11) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation
- 15 is actively managed for livestock grazing or browsing or occasional hay production.
- 16 (12) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to,
- 17 water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or
- 18 reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes
- 19 in ground water and surface water storage as they relate to uses of land and water within the area affected by
- 20 coal bed methane operations and the adjacent area.
- 21 (13) "Imminent danger to the health or safety of the public" means the existence of any condition or
- 22 practice or any violation of a permit or other requirement of [sections 1 through 27] in a coal bed methane
- 23 operation that could reasonably be expected to cause substantial physical harm to persons outside the permit
- 24 area before the condition, practice, or violation can be abated. A reasonable expectation of substantial physical
- 25 harm before abatement exists if a rational person, subjected to the same conditions or practices giving rise to
- 26 the peril, would not willingly be exposed to the danger during the time necessary for abatement.
- 27 (14) "Industrial or commercial" means a category of land used for:
- 28 (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or
- 29 long-term storage of products and includes all heavy and light manufacturing facilities; or
- 30 (b) retail sale or trade of goods or services, including hotels, motels, stores, restaurants, and other

1 commercial establishments.

2 (15) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least
3 some part of the year and that obtains its flow from both ground water discharge and surface runoff.

4 (16) "Land application and disposal" means the disposal of coal bed methane wastewater on native
5 soils.

6 (17) "Land use" means specific uses or management-related activities. Land uses may be identified in
7 combination when joint or seasonal uses occur and may include land used for support facilities that are an
8 integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife
9 habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation,
10 or residential.

11 (18) "Operator" means a person engaged in coal bed methane operations.

12 (19) "Pastureland" means land used primarily for the long-term production of adapted, domesticated
13 forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

14 (20) "Person" means an individual, partnership, corporation, association, or other legal entity or any
15 political subdivision or agency of the state or federal government except the department.

16 (21) "Prospecting" means:

17 (a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching,
18 or geophysical or other techniques necessary to determine:

19 (i) the quality and quantity of overburden in an area; or

20 (ii) the location, quantity, or quality of a coal bed methane deposit; or

21 (b) the gathering of environmental data to establish the conditions of an area before beginning coal bed
22 methane operations or reclamation under [sections 1 through 27].

23 (22) "Reclamation" means backfilling, subsidence stabilization, water control, grading, resoiling, planting,
24 revegetation, and other work conducted on lands affected by coal bed methane operations under a plan
25 approved by the department to make those lands capable of supporting the uses that those lands were capable
26 of supporting prior to any coal bed methane operations.

27 (23) "Reclamation plan" means the operator's written proposal, as required and approved by the
28 department, for reclamation of the land that will be affected.

29 (24) "Recreation" means a category of land used for public or private leisure-time activities, including
30 developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive

1 uses, such as hiking, canoeing, and other undeveloped recreational uses.

2 (25) "Residential" means a category of land used for single-family and multiple-family housing, mobile
3 home parks, or other residential lodgings.

4 (26) "Restore" or "restoration" means reestablishment after coal bed methane operations and
5 reclamation of the land use that existed prior to coal bed methane operations.

6 (27) "Soil" means the unconsolidated mineral matter that is naturally present on the surface of the earth,
7 that has been subjected to and influenced by genetic and environmental factors of parent material, climate,
8 macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary
9 for the growth and regeneration of vegetation on the surface of the earth.

10 (28) "Surface owner" means:

11 (a) a person who holds legal or equitable title to the surface of the land;

12 (b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be
13 directly affected by coal bed methane operations or who receives directly a significant portion of income from
14 farming or ranching operations;

15 (c) the state of Montana when the state owns the surface of the land; or

16 (d) the appropriate federal land management agency when the United States government owns the
17 surface of the land.

18 (29) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, rocks, soil, or woody debris
19 on the land or emerging from or adjacent to waters and considered to reflect vegetative cover of the land or
20 adjacent water under sound management.

21 (30) "Written consent" means a statement that is executed by the surface owner and that is written on
22 a form approved by the department to demonstrate that the surface owner consents to entry of an operator for
23 the purpose of conducting coal bed methane operations and that the consent is given only to coal bed methane
24 operations that fully comply with the terms and requirements of [sections 1 through 27].

25

26 **NEW SECTION. Section 4. Board rules.** (1) After an opportunity for a hearing, the board shall adopt
27 general rules pertaining to coal bed methane operations to accomplish the purposes of [sections 1 through 27].

28 (2) The board may adopt rules with respect to filing of reports, issuance of permits, monitoring, and
29 other matters of procedure and administration.

30

1 **NEW SECTION. Section 5. Coal bed methane operations reclamation account.** There is a coal bed
2 methane operations reclamation account. All fees, fines, penalties, and other uncleared money that has been
3 or will be paid to the department under the provisions of [sections 1 through 27] must be placed in the coal bed
4 methane operations reclamation account. Funds held by the department as bond or as a result of bond forfeiture
5 that are no longer needed for reclamation and for which the department is not able to locate a surety or other
6 person who owns the funds after diligent search must be deposited in the environmental rehabilitation and
7 response account provided for in 75-1-110.

8
9 **NEW SECTION. Section 6. Administration.** The department is charged with the responsibility of
10 administering [sections 1 through 27]. In order to implement the terms and provisions of [sections 1 through 27],
11 the board shall from time to time promulgate rules that the board determines are necessary. The department
12 shall employ experienced, qualified persons in the field of land reclamation.

13
14 **NEW SECTION. Section 7. Investigations, research, and experiments.** The department may
15 conduct or authorize investigations, research, experiments, and demonstrations in reclamation and collect and
16 disseminate information relating to coal bed methane operations.

17
18 **NEW SECTION. Section 8. Interagency cooperation -- receipt and expenditure of funds.** The
19 department shall coordinate with all state and federal agencies, including but not limited to the board of oil and
20 gas conservation, U.S. bureau of land management, U.S. environmental protection agency, U.S. fish and wildlife
21 service, and local conservation districts, in implementing the requirements of [sections 1 through 27]. The
22 department shall cooperate with other governmental agencies in this state and other states and agencies of the
23 federal government and may reasonably compensate them for any services that the department requests that
24 they provide. The department may receive federal funds, state funds, and any other funds and, within the limits
25 imposed by the grant, may expend the funds for reclamation of land and water affected by coal bed methane
26 operations and for purposes enumerated in [section 10].

27
28 **NEW SECTION. Section 9. Operating permit -- limitation -- fees -- term.** (1) A person may not
29 engage in coal bed methane operations or affect land or water in anticipation of those activities in the state
30 without first obtaining an operating permit from the department. A separate permit is required for each plan of

1 operation. The submittal of a plan of development or an application for a permit to drill to the board of oil and
2 gas conservation or the bureau of land management triggers the requirements of [sections 1 through 27].

3 (2) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee
4 of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay
5 an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal
6 operating expenses of the department whenever those expenses are reasonably necessary to provide for timely
7 and adequate review of the application, including any environmental review conducted under Title 75, chapter
8 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines
9 that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the
10 applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses.
11 The department shall provide the applicant with an opportunity to review the department's estimated expenses.
12 The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

13 (3) Prior to receiving a permit, a person shall submit an application, including a form provided by the
14 department, which must contain the following information and any other pertinent data required by rule:

15 (a) the name and address of the operator and, if the operator is a corporation or other business entity,
16 the name and address of its partners, officers, directors, owners of 10% or more of any class of voting stock,
17 and business association members and the operator's resident agent for service of process, if required by law;

18 (b) a proposed operations and reclamation plan. The proposal must include, to the extent practical at
19 the time of application for an operating permit:

20 (i) a statement of the proposed subsequent use of the land after reclamation, which may include use
21 of the land as an industrial site not necessarily related to coal bed methane operations;

22 (ii) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the
23 land after reclamation is completed, plans for restoring ephemeral drainageways or intermittent streams, and
24 the proposed method of accomplishment;

25 (iii) the manner and type of revegetation or other surface treatment of affected areas that specifically
26 address the reclamation of soils affected by coal bed methane operations;

27 (iv) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public
28 safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

29 (v) the method of disposal of debris;

30 (vi) the method of diverting surface water around the affected areas when necessary to prevent pollution

- 1 of those waters or unnecessary erosion;
- 2 (vii) the method of reclamation of stream channels and streambanks to control erosion, siltation, and
3 pollution;
- 4 (viii) maps and other supporting documents that may be reasonably required by the department; and
5 (ix) a time schedule for reclamation that meets the requirements of [section 10].
- 6 (c) the expected starting and completion date of operations;
- 7 (d) a map showing the specific area where coal bed methane operations will occur and the boundaries
8 of the land that will be affected, the topographic detail, the location and names of all streams, roads, railroads,
9 and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;
- 10 (e) the names and addresses of the owners of record and any purchasers under contracts for deed of
11 the surface of the land within the permit area and the owners of record and any purchasers under contracts for
12 deed of all surface area within 1 mile of any part of the permit area. The department is not required to verify this
13 information.
- 14 (f) a statement describing efforts made to obtain written consent from the surface owner, any resolution
15 for the payment of damages to the surface owner as required by federal or state law, and if applicable, a copy
16 of any surface use agreement or reclamation plan negotiated with the surface owner;
- 17 (g) the names and addresses of the present owners of record and any purchasers under contracts for
18 deed of all minerals in the land within the permit area. The department is not required to verify this information.
- 19 (h) the source of the applicant's legal right to engage in coal bed methane operations on the land
20 affected by the permit. The department is not required to verify this information.
- 21 (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;
- 22 (j) ground water and surface water hydrologic data gathered from a sufficient number of sources and
23 length of time to characterize the hydrologic balance;
- 24 (k) a plan detailing the design, operation, and monitoring of impounding structures, including but not
25 limited to wastewater impoundments, sufficient to ensure that the structures are safe and stable;
- 26 (l) a plan detailing the design, operation, and monitoring of areas where wastewater will be applied to
27 the surface; and
- 28 (m) baseline data for the proposed operations area on soils, vegetation, land use, surface and ground
29 water resources, wildlife, and cultural and historic resources.
- 30 (4) A person may not be issued a permit if:

1 (a) that person's failure, or the failure of any firm or business association of which that person was a
 2 principal or controlling member, to comply with the provisions of [sections 1 through 27], the rules adopted under
 3 [sections 1 through 27], or a permit or license issued under [sections 1 through 27] has resulted in either the
 4 receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the
 5 department, unless that person meets the conditions described in [section 24];

6 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to
 7 [section 25]; or

8 (c) that person has failed to comply with an abatement order issued pursuant to [section 23], unless the
 9 department has completed the abatement and the person has reimbursed the department for the cost of
 10 abatement.

11 (5) A person may not be issued a permit under [sections 1 through 27] unless, at the time of submission
 12 of a bond, the person provides the current information required in subsection (3)(a) and:

13 (a) (i) certifies that the person is not currently in violation of any law, rule, or regulation of this state or
 14 of the United States pertaining to air quality, water quality, or reclamation; or

15 (ii) presents a certification by the administering agency that the violation is in the process of being
 16 corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

17 (b) if the person is a partnership, corporation, or other business association, provides the certification
 18 required by subsection (5)(a)(i) or (5)(a)(ii), as applicable, for any partners, officers, directors, owners of 10%
 19 or more of any class of voting stock, and business association members.

20 (6) Permits are valid for 5 years from the date of issuance.

21
 22 **NEW SECTION. Section 10. Reclamation plan and specific reclamation requirements.** (1) Taking
 23 into account the site-specific conditions and circumstances, including the uses of the area after coal bed
 24 methane operations have ceased, affected land must be reclaimed consistent with the requirements and
 25 standards set forth in this section.

26 (2) The reclamation plan must specify performance standards applicable to reclamation of soils, surface
 27 and ground water, vegetative cover, and approved land uses. The reclamation plan must provide that
 28 reclamation activities, particularly those relating to protection of water and land resources and control of erosion,
 29 to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated
 30 within 60 days after completion or abandonment of the operation on those portions of the complex that will not

1 be subject to further disturbance.

2 (3) In the absence of an order by the department providing a longer period, the plan must provide that
3 reclamation activities must be completed not more than 2 years after completion or abandonment of the coal
4 bed methane operation.

5 (4) In the absence of an emergency, an operator may not depart from an approved plan without
6 previously obtaining from the department written approval for the proposed change.

7 (5) Provision must be made to avoid accumulation of stagnant water in the operation area to the extent
8 that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

9 (6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless
10 approval has been granted by the department for a supervised sanitary fill.

11 (7) Requirements for vegetative cover must be provided in the reclamation plan if appropriate to the
12 future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county
13 standards for noxious weed control.

14 (8) The reclamation plan must provide for the reclamation of all affected land and land uses to
15 comparable utility and integrity as that of adjacent areas under sound management and not subjected to coal
16 bed methane operations. With regard to wastewater impoundments and land application and disposal sites, the
17 reclamation plan must provide sufficient measures for reclamation to a condition that:

18 (a) withstands geologic and climatic conditions without significant failure;

19 (b) would not be a threat to the environment;

20 (c) affords some utility to humans or the environment; and

21 (d) mitigates or prevents undesirable offsite environmental impacts.

22 (9) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the
23 pollution of air or water and the degradation of adjacent areas.

24 (10) A reclamation plan must be approved by the department if it adequately provides for the
25 accomplishment of the requirements and standards set forth in this section.

26 (11) The reclamation plan must provide for permanent landscaping and contouring to minimize the
27 amount of precipitation that infiltrates into affected areas that were formerly wastewater impoundments, land
28 application and disposal sites, or other salt-laden areas with the intention of preventing saline seep.

29 (12) The reclamation plan must provide for soil salvage and replacement, handling and disposal of drill
30 hole cuttings, and management of coal bed methane wastewater. The plan must also provide measures to

1 prevent objectionable coal bed methane ground water discharges after operations have ceased.

2 (13) The reclamation plan may incorporate additional reclamation measures included in an agreement
3 between the operator and the surface owner if those measures are consistent with the requirements of [sections
4 1 through 27].

5

6 **NEW SECTION. Section 11. Inspection -- issuance of permit -- modification, amendment, or**

7 **revision.** (1) (a) The department shall review all applications to conduct coal bed methane operations and
8 reclamation within 90 days of receipt of the initial application and within 60 days of receipt of responses to
9 notices of deficiencies. The review notice must note discernible deficiency issues. The department may note
10 deficiencies during subsequent reviews of applications resubmitted in response to the initial application review.
11 If the department determines that an environmental impact statement is required, it shall notify the applicant in
12 writing at the same time it issues notice pursuant to this section.

13 (b) A permit may not be issued until:

14 (i) the coal bed methane operations and reclamation application meets the requirements of [sections
15 1 through 27];

16 (ii) sufficient bond has been submitted pursuant to [section 12];

17 (iii) the information and certification have been submitted pursuant to [section 9(5)]; and

18 (iv) the department has found that permit issuance is not prohibited by [section 9(4)].

19 (c) (i) Prior to issuance of a permit, the department shall inspect the site. If the site is not accessible
20 because of extended adverse weather conditions, the department may extend the time period prescribed in
21 subsection (1)(a) by not more than 180 days to allow inspection of the site and reasonable review. The
22 department shall serve written notice of extension upon the applicant in person or by certified mail, and any
23 extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

24 (ii) If the department determines that additional time is needed for analysis to determine whether a
25 detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall
26 negotiate to extend the period prescribed in subsection (1)(a) by not more than 75 days to permit reasonable
27 analysis. The applicant may by written waiver extend this period.

28 (iii) If the department determines that additional time is needed to review the application and reclamation
29 plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in
30 subsection (1)(a) by not more than 365 days in order to permit reasonable review. The applicant may by written

1 waiver extend this time period.

2 (2) The operating permit is valid for 5 years or until the operation is completed or abandoned, whichever
3 is shorter, unless the permit is suspended or revoked by the department as provided in [sections 1 through 27].

4 (3) The operating permit must provide that the reclamation plan may be modified by the department,
5 upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the
6 term of the permit and for any of the following reasons:

7 (a) to modify the requirements so that they will not conflict with existing laws;

8 (b) when the previously adopted reclamation plan is impossible or impracticable to implement and
9 maintain;

10 (c) when significant environmental problem situations are revealed by field inspection.

11 (4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit
12 revision. A modification of the operating permit, including a modification necessary to conform to the
13 requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in
14 accordance with the procedures for an application for a permit amendment or revision that are established
15 pursuant to [section 17] and this section, including any environmental analysis required by Title 75, chapter 1,
16 part 2.

17 (b) The modification of an operating permit may not be finalized and an existing bond amount may not
18 be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.

19 (5) During the term of an operating permit, an operator may apply for an amendment or revision to the
20 permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

21 (6) Applications for major amendments must be processed in the same manner as applications for new
22 permits.

23 (7) If the department demonstrates that a revision may result in a significant environmental impact that
24 was not previously and substantially evaluated in an environmental impact statement, the application must be
25 processed in the same manner as an application for a new permit.

26
27 **NEW SECTION. Section 12. Performance bond.** (1) An applicant for a permit shall file with the
28 department a bond payable to the state of Montana, with surety satisfactory to the department, in a sum to be
29 determined by the department of not less than \$1,000 for each acre or fraction of an acre of the affected land,
30 conditioned upon the faithful performance of the requirements of [sections 1 through 27], the rules adopted

1 pursuant to [sections 1 through 27], and the permit. The bond required by [sections 1 through 27] is in addition
2 to any bond required by the board of oil and gas conservation for plugging and restoring oil and gas wells
3 pursuant to 82-11-123. The department shall take into account any other bonds posted by the operator with any
4 federal or state agency in determining the bond amount pursuant to [sections 1 through 27]. In lieu of a bond,
5 the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an
6 irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the
7 estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, [sections 1 through 27], the
8 rules adopted pursuant to [sections 1 through 27], and the permit, including the potential cost of department
9 management, operation, and maintenance of the site upon temporary or permanent operator insolvency or
10 abandonment until full bond liquidation can be effected. The bond may not be less than the total estimated cost
11 to the state of completing the work described in the reclamation plan. A public or governmental agency may not
12 be required to post a bond under the provisions of [sections 1 through 27].

13 (2) The department may calculate one or more reclamation plan components within its jurisdiction with
14 the assistance of one or more third-party contractors selected by the department and compensated by the
15 applicant when, based on relevant past experience, the department determines that additional expertise is
16 necessary to calculate the bond amount for reclamation plan components. The department may contract for
17 assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent
18 bond review and adjustment. The operator is responsible for the first \$5,000 in contractor services provided
19 under this subsection. The operator and the department are each responsible for 50% of any amount over
20 \$5,000.

21 (3) (a) The department shall conduct an overview of the amount of each bond annually. The department
22 may conduct additional bond reviews if, after modification of a reclamation plan, an annual overview, or an
23 inspection of the permit area, the department determines that an increase of the bond level may be necessary.
24 The department shall consult with the operator if a review indicates that the bond level should be adjusted. If
25 the department determines that the set bonding level of a permit or license does not represent the present costs
26 of compliance with [sections 1 through 27], the rules adopted pursuant to [sections 1 through 27], and the permit,
27 the department shall modify the bonding requirements of that permit or license. The operator has 60 days to
28 negotiate the preliminary bond determination with the department, at the end of which time period the
29 department shall issue the proposed bond determination. The department shall give the operator a copy of the
30 bond calculations that form the basis for the proposed bond determination and publish notice of the proposed

1 bond determination in a newspaper of general circulation in the county in which the operation is located. The
2 department shall issue a final bond determination in 30 days. Unless the operator requests a hearing under
3 subsection (3)(b), the operator shall post bond with the department in the amount represented by the final bond
4 determination no later than 30 days after issuance of the final bond determination. If the operator demonstrates
5 that, through the exercise of reasonable diligence, the operator will not be able to post the bond within 30 days,
6 the department shall grant a 30-day extension of the deadline.

7 (b) The operator or any person with an interest that may be adversely affected may obtain a contested
8 case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter
9 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final
10 bond determination, a written request for a hearing stating the reason for the request. The request for a hearing
11 must specify the amount of bond increase, if any, that the operator or person considers appropriate and must
12 state the reasons that the operator or person considers the department's final bond determination to be
13 erroneous. As a condition precedent to any right to request a hearing, the operator or person shall post bond
14 with the department in the amount of the bond increase that the operator or person has stated is appropriate in
15 the request for hearing or the amount that is one-half of the increase contained in the department's final bond
16 determination, whichever amount is greater. If the board determines that additional bond is necessary, the
17 operator shall post bond in the amount determined by the board within 30 days of receipt of the board's decision.
18 If the operator demonstrates that, through the exercise of reasonable diligence, the operator will not be able to
19 post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

20 (c) If an operator fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required
21 amounts by the required deadlines, the permit is suspended by operation of law and the operator shall
22 immediately cease coal bed methane operations until the required bond is posted with and approved by the
23 department.

24 (4) A bond filed in accordance with the provisions of [sections 1 through 27] may not be released by the
25 department until the provisions of [sections 1 through 27], the rules adopted pursuant to [sections 1 through 27],
26 and the conditions of the permit have been fulfilled.

27 (5) A bond filed for an operating permit obtained under [sections 1 through 27] may not be released or
28 decreased until the public has been provided an opportunity for a hearing and a hearing has been held if
29 requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing,
30 including but not limited to publishing the notice in newspapers of general daily circulation.

1 (6) All bonds required in accordance with the provisions of this section must be based upon reasonably
2 foreseeable activities that the applicant may conduct. Bonds may be required only for anticipated activities as
3 described in subsection (1). Only those activities that themselves or in conjunction with other activities have a
4 reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond
5 or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency
6 that is not a reasonably foreseeable result of any activity conducted by the applicant.

7 (7) At the applicant's discretion, bonding in addition to that required by this section may be posted.
8 These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

9 (8) (a) If the department determines that there exists in an area permitted under [sections 1 through 27]
10 an imminent danger to the health or safety of the public or to the environment caused by a violation of [sections
11 1 through 27], the rules adopted pursuant to [sections 1 through 27], or the permit and if the operator fails or
12 refuses to expeditiously abate the danger, the department may immediately suspend the permit, enter the site,
13 and abate the imminent danger. The department may institute proceedings to revoke the permit, declare the
14 operator in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of the bond, whichever is
15 less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture
16 amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of
17 receipt of the notice.

18 (b) If the department is unable to permanently abate the imminent danger using the amount forfeited
19 under subsection (8)(a), the department may forfeit additional amounts under the procedure provided in
20 subsection (8)(a).

21 (c) The department shall return to the surety any money received from the surety pursuant to this
22 subsection (8) and not used by the department to abate the imminent danger. The amount not returned to the
23 surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

24 (d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined
25 in subsection (8)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

26 (9) If a bond is terminated as a result of the action or inaction of an operator or is canceled or otherwise
27 terminated by the surety issuing the bond and the operator fails to post a new bond for the entire amount of the
28 terminated bond within 30 days following the notice of termination provided to the department, the permit must
29 be immediately suspended without further action by the department.

30

1 NEW SECTION. **Section 13. Annual report of activities by operator.** (1) Within 30 days after
2 completion or abandonment of operations on an area under permit or within 30 days after each anniversary date
3 of the permit, whichever is earlier, or at a later date that may be provided by rules of the board and each year
4 after that date until reclamation is completed and approved, the operator shall pay the annual fee of \$100 and
5 shall file a report of activities completed during the preceding year on a form prescribed by the department. The
6 report must:

7 (a) identify the operator and the permit number;
8 (b) locate the operation by subdivision, section, township, and range and in relation to the nearest town
9 or other well-known geographic feature;

10 (c) estimate acreage to be newly affected by operation in the next 12-month period;

11 (d) update the information required in [section (9)(3)(a)];

12 (e) update any maps previously submitted or specifically requested by the department. The maps must
13 show:

14 (i) the permit area;

15 (ii) the unit of affected land;

16 (iii) the area to be affected during the next 12-month period;

17 (iv) if completed, the date of completion of operations; and

18 (v) if not completed, the additional area estimated to be further affected by the operation within the
19 following permit year.

20 (f) include any other detail required by the department, supplemented with maps, cross sections, or
21 other material indicating the extent of operations to that point in time; and

22 (g) detail the progress of reclamation, including the date of beginning, amount, and current status of
23 reclamation performed during the previous 12 months and, if applicable, the extent of deviation from
24 expectations and predictions made in the original application.

25 (2) Upon receipt of the annual report, the department may request additional information, allowing the
26 operator a reasonable time to respond.

27 (3) The department may order changes to the operating plan or reclamation plan based on new
28 information or field inspections to ensure compliance with [sections 1 through 27].

29

30 NEW SECTION. **Section 14. Successor operator.** When one operator succeeds to the interest of

1 another operator in any uncompleted operation by sale, assignment, lease, or otherwise, the department may
2 release the first operator from the duties imposed upon the operator by [sections 1 through 27] as to the
3 operation, provided that both operators have complied with the requirements of [sections 1 through 27] and the
4 successor operator assumes the duty of the former operator to complete the reclamation of the land, in which
5 case the department shall transfer the permit to the successor operator upon approval of the successor
6 operator's bond as required under [sections 1 through 27].

7
8 **NEW SECTION. Section 15. Reclamation by department -- liens.** (1) Agents, employees, or
9 contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work
10 to determine whether a coal bed methane operation has been conducted or reclaimed and rehabilitated in
11 accordance with the requirements of [sections 1 through 27] and to determine the feasibility of restoration,
12 reclamation, abatement, control, or prevention of any adverse effects of past coal bed methane operational
13 practices. Upon request of the director of the department, the attorney general shall bring an injunctive action
14 to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The
15 action must be brought in the county in which the operation is located.

16 (2) The department may have reclamation work done by its employees, by employees of other
17 governmental agencies, by soil conservation districts, or through contracts with qualified persons. The board
18 may construct, operate, and maintain plants for the control and treatment of water pollution resulting from
19 drainage related to the operation.

20 (3) Any funds or any public works programs available to the department must be used and expended
21 to reclaim and rehabilitate lands that have been subjected to coal bed methane operations and that have not
22 been reclaimed and rehabilitated in accordance with the standards of [sections 1 through 27]. The department
23 shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

24 (4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of
25 fact that:

26 (i) land or water resources have been adversely affected by past coal bed methane operational
27 practices;

28 (ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate,
29 control, or prevent the adverse effects should be taken; and

30 (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate,

1 control, or prevent the adverse effects of past coal bed methane operational practices are not known or readily
2 available or the owners will not give permission for the department or its agents, employees, or contractors to
3 enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal bed
4 methane operations.

5 (b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if
6 known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general
7 circulation in the county in which the land is located, the agents, employees, or contractors of the department
8 may enter on the property adversely affected by past coal bed methane operational practices and on any other
9 property necessary for access to the operation's property to do all things necessary or expedient to restore,
10 reclaim, abate, control, or prevent the adverse effects of past coal bed methane operational practices.

11 (c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but
12 rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

13 (5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent
14 adverse effects of past coal bed methane operational practices on privately owned land, the department shall
15 itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder
16 of the county in which the land is located, together with a notarized appraisal by an independent appraiser of
17 the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects
18 of past coal bed methane operational practices if the money expended resulted in a significant increase in
19 property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined
20 by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation,
21 abatement, control, or prevention of the adverse effects of past coal bed methane operational practices. A lien
22 under this subsection (5)(a) may not be filed against the property of a person who did not consent to, participate
23 in, or exercise control over the operation that necessitated the reclamation performed under [sections 1 through
24 27].

25 (b) The landowner may within 60 days of the filing of the lien petition for a determination of the increase
26 in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of
27 the adverse effects of past coal bed methane operational practices. The amount reported to be the increase in
28 value of the premises constitutes the amount of the lien and must be recorded with the statement provided for
29 in this section. Any party aggrieved by the decision may appeal as provided by law.

30 (c) The lien provided in this section must be recorded at the office of the county clerk and recorder of

1 the county in which the land is located. The statement constitutes a lien upon the land as of the date of the
2 expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon
3 the land.

4 (6) The department may acquire the necessary property by gift or purchase. If the property cannot be
5 acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title
6 70, chapter 30, against all nonaccepting landholders if:

7 (a) the property is necessary for successful reclamation;

8 (b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse
9 effects of past coal bed methane operational practices will serve recreation and historic purposes or
10 conservation and reclamation purposes or provide open space benefits; and

11 (c) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on
12 the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal
13 bed methane operational practices.

14
15 **NEW SECTION. Section 16. Noncompliance -- suspension of permits.** (1) If it is determined on the
16 basis of an inspection that the permittee is in violation of or that any condition or practice exists in violation of
17 any requirement of [sections 1 through 27] or any permit condition required by [sections 1 through 27] that
18 creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to
19 cause significant and imminent environmental harm to land, air, or water resources, the director of the
20 department or an authorized representative shall immediately order cessation of the operation or the portion of
21 the operation relevant to the condition, practice, or violation. The cessation order remains in effect until the
22 director or an authorized representative determines that the condition, practice, or violation has been abated or
23 until the order is modified, vacated, or terminated by the director or an authorized representative pursuant to
24 subsection (5). If the director or an authorized representative finds that the ordered cessation of the operation
25 or any portion of the operation will not completely abate the imminent danger to the health or safety of the public
26 or the significant and imminent environmental harm to land, air, or water resources, the director or the authorized
27 representative shall, in addition to the cessation order, impose affirmative obligations requiring any steps that
28 the director or the authorized representative considers necessary to abate the imminent danger or the significant
29 environmental harm.

30 (2) When, on the basis of an inspection, the department determines that any permittee is in violation

1 of any requirement of [sections 1 through 27] or any permit condition required by [sections 1 through 27] that
2 does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to
3 cause significant and imminent environmental harm to land, air, or water resources, the director or an authorized
4 representative shall issue a notice to the permittee or the permittee's agent fixing a reasonable time, not
5 exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon
6 expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon
7 the written finding of the director or an authorized representative, the director or an authorized representative
8 finds that the violation has not been abated, the director or authorized representative shall immediately order
9 a cessation of the operation or the portion of the operation relevant to the violation. The cessation order remains
10 in effect until the director or an authorized representative determines that the violation has been abated or until
11 the order is modified, vacated, or terminated by the director or authorized representative pursuant to subsection
12 (5). In the order of cessation issued under this subsection, the director shall determine the steps necessary to
13 abate the violation in the most expeditious manner possible and shall include the necessary measures in the
14 order.

15 (3) When, on the basis of an inspection, the director or an authorized representative determines that
16 a pattern of violations of any requirements of [sections 1 through 27] or any permit conditions required by
17 [sections 1 through 27] exists or has existed and if the director or an authorized representative also finds that
18 the violations are caused by the unwarranted failure of the permittee to comply with any requirements of
19 [sections 1 through 27] or any permit conditions or that the violations are willfully caused by the permittee, the
20 director or authorized representative shall issue an order to the permittee to show cause as to why the permit
21 should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested,
22 the director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure
23 to show cause as to why the permit should not be suspended or revoked, the director or authorized
24 representative shall suspend or revoke the permit. When a permit has been revoked, the department may order
25 the performance bond forfeited.

26 (4) Any additional permits held by an operator whose coal bed methane permit has been revoked must
27 be suspended, and the operator is not eligible to receive another permit or to have the suspended permits
28 reinstated until the operator has complied with all the requirements of [sections 1 through 27] with respect to
29 former permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another
30 permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the

1 operator has paid into the environmental rehabilitation and response account provided for in 75-1-110 a sum
2 together with the value of the bond that the department finds adequate to reclaim the lands.

3 (5) Notices and orders issued pursuant to this section must set forth with reasonable specificity the
4 nature of the violation and the remedial action required, the period of time established for abatement, and a
5 reasonable description of the portion of the operation to which the notice or order applies. Each notice or order
6 issued under this section must be given promptly to the permittee or the permittee's agent by the department,
7 by the director, or by the authorized representative who issued the notice or order. All notices and orders must
8 be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section
9 may be modified, vacated, or terminated by the director or an authorized representative. However, any notice
10 or order issued pursuant to this section that requires cessation of operations by the operator expires within 30
11 days of actual notice to the operator unless a public hearing is held at the site or within reasonable proximity to
12 the site that any viewings of the site can be conducted during the course of public hearing.

13 (6) A person who has been issued a notice or an order of cessation pursuant to this section or a person
14 who has an interest that is or may be adversely affected by an order or by modification, vacation, or termination
15 of an order may apply to the department for review of that order within 30 days of its issuance or within 30 days
16 of its modification, vacation, or termination. Upon receipt of the application, the department shall make an
17 investigation. The investigation must provide an opportunity for public hearing at the request of the applicant or
18 the person who has an interest who is or may be adversely affected to enable the applicant or the person to
19 present information relating to the issuance and continuance of the notice or order or the modification, vacation,
20 or termination of the notice or order. The filing of an application for review under this subsection may not operate
21 as a stay of any notice or order. The department shall make findings of fact and issue a written decision
22 incorporating an order vacating, affirming, modifying, or terminating the notice or order.

23 (7) Whenever an order is issued under this section or as the result of any administrative proceeding
24 under [sections 1 through 27], at the request of any person, a sum equal to the aggregate amount of all costs,
25 expenses, and attorney fees as determined by the department to have been reasonably incurred by the person
26 for or in connection with the person's participation in the proceedings, including any judicial review of agency
27 actions, may be assessed against either party as the court, resulting from judicial review, or the department,
28 resulting from administrative proceedings, considers proper.

29
30 **NEW SECTION. Section 17. Amendment to operating permits.** (1) During the term of an operating

1 permit issued under [sections 1 through 27], an operator may apply for an amendment to the permit. The
2 operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required
3 under [section 10], and bond release for the disturbance, as required under [section 12].

4 (2) (a) The board may by rule establish criteria for the classification of amendments as major or minor.
5 The board shall adopt rules establishing requirements for the content of applications for major and minor
6 amendments and the procedures for processing minor amendments.

7 (b) Major amendments are those that may significantly affect the environment. Minor amendments are
8 those that will not significantly affect the environment.

9 (c) An amendment must be considered minor if:

10 (i) it is for the purpose of retention of operations-related facilities that are valuable for postoperations
11 use;

12 (ii) evidence is submitted showing that a local government has requested retention of the
13 operations-related facilities for a postoperations use; and

14 (iii) the postoperations use of the operations-related facilities meets the requirements provided for in
15 [section 10].

16 (3) Applications for major amendments must be processed pursuant to [section 11].

17 (4) The department shall review an application for a minor amendment and provide a notice of decision
18 on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the
19 permit is revised in accordance with the application.

20 (5) The department is not required to prepare an environmental assessment or an environmental impact
21 statement for the following categories of action:

22 (a) actions that qualify for a categorical exclusion as defined by rule or justified by a review pursuant
23 to Title 75, chapter 1;

24 (b) repair or maintenance of the permittee's equipment or facilities;

25 (c) investigation and enforcement actions, such as data collection, inspection of facilities, or
26 enforcement of environmental standards;

27 (d) approval of actions that are primarily social or economic in nature and that do not otherwise affect
28 the human environment;

29 (e) changes in a permit boundary that increase affected acres that are insignificant in impact relative
30 to the entire operation, provided that the increase is less than 10 acres or 5% of the permitted area, whichever

1 is less;

2 (f) changes in an approved operating plan or reclamation plan for an activity that was previously
3 permitted, provided that the impacts of the change will be insignificant relative to the impacts of the entire
4 operation and there will be less than 10 acres of additional affected land; and

5 (g) changes in a permit for the purpose of retention of operations-related facilities that are valuable for
6 postoperations use.

7

8 **NEW SECTION. Section 18. Limitations of actions -- venue.** (1) Legal actions seeking review of a
9 department decision granting or denying an operating permit under [sections 1 through 27] must be filed within
10 90 days after the decision is made. Summons must be issued and process served on all defendants within 60
11 days after the action is filed.

12 (2) An action to challenge the issuance of a permit pursuant to [sections 1 through 27] must be brought
13 in the county in which the exploration or permitted activity is proposed to occur, unless otherwise stipulated by
14 the parties. If an activity is proposed to occur in more than one county, the action may be brought in any of the
15 counties in which the exploration or activity is proposed to occur or in another county stipulated by the parties.

16

17 **NEW SECTION. Section 19. Reasons for denial of permit.** (1) An application for a permit or an
18 application for an amendment to a permit may be denied for the following reasons:

19 (a) the plan of operation or reclamation conflicts with Title 75, chapter 2, 5, or 6, or rules adopted
20 pursuant to those chapters; or

21 (b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as
22 required by [sections 1 through 27].

23 (2) A denial of a permit must be in writing and must state the reasons for denial.

24

25 **NEW SECTION. Section 20. Reapplication with new operation or reclamation plan.** A permit
26 application may be denied and returned to the applicant with a request that the application be resubmitted with
27 a different operation plan or reclamation plan. The person applying for a permit may then resubmit to the
28 department a new operation plan or reclamation plan.

29

30 **NEW SECTION. Section 21. Administrative remedies -- notice -- appeals -- parties.** (1) Upon

1 receipt of an application for an operating permit, the department shall provide notice of the application by
2 publication in a newspaper of general circulation in the area to be affected by the operation. The notice must
3 be published once a week for 3 successive weeks.

4 (2) An applicant for a permit or for an amendment or revision to a permit may request a hearing on a
5 denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice
6 of the denial. The request must state the reason that the hearing is requested.

7 (3) All hearings and appeals under [sections 1 through 27] and subsection (2) of this section must be
8 conducted by the board in accordance with the Montana Administrative Procedure Act. Any person whose
9 interests may be adversely affected as a result of an action taken pursuant to [sections 1 through 27] may
10 become a party to any proceeding held under [sections 1 through 27] upon a showing that the person is capable
11 of adequately representing the interests claimed.

12 (4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity.
13

14 **NEW SECTION. Section 22. Mandamus to compel enforcement.** (1) A person having an interest
15 that is or may be adversely affected, with knowledge that a requirement of [sections 1 through 27] or a rule
16 adopted under [sections 1 through 27] is not being enforced by a public officer or employee whose duty it is to
17 enforce the requirement or rule, may bring the failure to the attention of the public officer or employee by an
18 affidavit stating the specific facts of the failure. Knowingly making false statements or charges in the affidavit
19 subjects the affiant to penalties prescribed for false swearing, as provided in 45-7-202.

20 (2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the
21 affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of
22 the first judicial district or in the district court of the county in which the land is located. If the court finds that a
23 requirement of [sections 1 through 27] or a rule adopted under [sections 1 through 27] is not being enforced, it
24 shall order the public officer or employee to perform the duties. If the officer or employee fails to do so, the public
25 officer or employee must be held in contempt of court and is subject to the penalties provided by law.

26 (3) A person having an interest that is or may be adversely affected may commence a civil action to
27 compel compliance with [sections 1 through 27] against a person for the violation of [sections 1 through 27] or
28 any rule, order, or permit issued under [sections 1 through 27]. However, an action may not be commenced:

29 (a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged
30 violator; or

1 (b) if the department has commenced and is diligently prosecuting a civil action to require compliance
2 with the provisions of [sections 1 through 27] or any rule, order, or permit issued under [sections 1 through 27].
3 A person having an interest that is or may be adversely affected may intervene as a matter of right in the civil
4 action.

5 (4) Legal actions under this section must be brought in the district court of the county in which the
6 alleged violation occurred unless the parties to the action mutually agree to another judicial district.

7 (5) This section does not restrict any right of any person under any statute or common law to seek
8 enforcement of [sections 1 through 27] or the rules adopted under [sections 1 through 27] or to seek any other
9 relief.

10
11 **NEW SECTION. Section 23. Abatement of environmental emergencies.** (1) Whenever an
12 environmental emergency exists, as determined by the department, at an active, temporarily abandoned, or
13 permanently abandoned coal bed methane operations site, the department may enter the site and may apply
14 for and, if approved by the governor, use the funds in the environmental contingency account created in
15 75-1-1101 to abate the situation on either a temporary or a permanent basis.

16 (2) The department may bring an action against the operator to recover the abatement costs in the
17 district court of the first judicial district in Lewis and Clark County. This section does not affect the right of the
18 department to retain or pursue forfeiture of any bond posted pursuant to [section 12]. Expenditures from the
19 environmental contingency account that are recovered under this subsection must be deposited in the
20 environmental contingency account.

21
22 **NEW SECTION. Section 24. When activity prohibited -- exception.** (1) Except as provided in
23 subsection (2), a person may not conduct coal bed methane operations in this state if that person or any firm
24 or business association of which that person was a principal or controlling member had a bond forfeited under
25 [sections 1 through 27], if the department otherwise received proceeds from a surety to perform reclamation on
26 that person's behalf, or if the person's surety completed reclamation on the person's behalf.

27 (2) A person described in subsection (1) may apply for a permit if:

28 (a) that person pays to the department:

29 (i) the full amount of the necessary expenses incurred by the department under [section 15] for
30 reclamation of the area for which the bond was forfeited;

- 1 (ii) the full amount of any penalties assessed under [sections 1 through 27]; and
2 (iii) interest on the expenses incurred and penalties assessed at the rate of 6% a year; and
3 (b) the person demonstrates and the department determines that the person has remedied the
4 conditions that led to the bond forfeiture or receipt of the bond proceeds and that those conditions no longer
5 exist.

6
7 **NEW SECTION. Section 25. Violation -- penalties.** (1) (a) The department may assess an
8 administrative civil penalty of not less than \$100 or more than \$1,000 for each of the following violations and an
9 additional administrative civil penalty of not less than \$100 or more than \$1,000 for each day during which the
10 violation continues and may bring an action for an injunction from continuing the violation against:

11 (i) a person or operator who violates a provision of [sections 1 through 27], a rule or order adopted
12 under [sections 1 through 27], or a term or condition of a permit; or

13 (ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation
14 of a provision of [sections 1 through 27], a rule or order adopted under [sections 1 through 27], or a term or
15 condition of a permit.

16 (b) If the violation created an imminent danger to the health or safety of the public or caused significant
17 environmental harm, the maximum penalty is \$5,000 for each day of violation.

18 (2) The department shall take into account the following factors in determining whether to institute a civil
19 penalty action and in determining the penalty amount:

20 (a) the nature, circumstances, extent, and gravity of the violation;

21 (b) the violator's prior history of violations;

22 (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

23 (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of
24 the violation; and

25 (e) other matters that justice may require.

26 (3) The department may bring an action for a restraining order or a temporary or permanent injunction
27 against a person or operator violating or threatening to violate an order issued under [sections 1 through 27].

28 (4) The department shall notify the person or operator of the violation. The department shall issue a
29 statement of proposed penalty within 30 days after issuing the notice of the violation. The person or operator,
30 by filing a written request stating the reason for the request within 20 days of receipt of the notice of proposed

1 penalty, is entitled to a hearing before the board on the issues of whether the alleged violation has occurred and
2 whether the penalty proposed to be assessed is proper. After the hearing, the board shall make findings of fact
3 and issue a written decision as to the occurrence of the violation and, if the board finds that the violation
4 occurred, the amount of penalty warranted. The board shall order the payment of a penalty in that amount. If the
5 time for requesting a hearing expires without a hearing request, the department shall make the findings of fact
6 and issue the written decision and order. The person or operator shall remit the amount of the penalty or may
7 petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the
8 hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the
9 order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations.
10 These penalties are recoverable in an action brought by the department in district court.

11 (5) Legal actions for injunctive relief under this section must be brought in the district court of the county
12 in which the alleged violation occurred unless the parties to the action mutually agree to another jurisdiction.
13 Legal actions for review of penalty orders or for recovery of penalties must be brought in the district court in the
14 first judicial district, Lewis and Clark County.

15
16 **NEW SECTION. Section 26. Suspension of permits -- hearing.**(1) If any of the requirements of
17 [sections 1 through 27], the rules adopted under [sections 1 through 27], or a permit have not been complied
18 with, the department shall serve a notice of violation on the operator or, if necessary, the director shall order the
19 suspension of the permit. A permit may also be suspended for failure to comply with an order to pay a civil
20 penalty if the order is not subject to administrative or judicial review. The director may order immediate
21 suspension of a permit whenever the director finds that a violation of [sections 1 through 27], the rules adopted
22 under [sections 1 through 27], or a permit is creating an imminent danger to the health or safety of the public
23 outside the permit area. The notice or order must be handed to the operator in person or served on the operator
24 by certified mail addressed to the permanent address shown on the application for a permit. The notice of
25 violation or order of suspension must specify the provision of [sections 1 through 27], the rules adopted under
26 [sections 1 through 27], or the permit violated and the facts alleged to constitute the violation and must, if the
27 violation has not been abated, order abatement within a specified time period.

28 (2) If the operator has not complied with the requirements set forth in the notice of violation or order of
29 suspension within the time limits set in the notice or order, the permit may be revoked by order of the department
30 and the performance bond forfeited to the department. The notice of violation or order of suspension must state

1 when those measures may be undertaken and must give notice of the opportunity for a hearing before the board.
2 A hearing may be requested by submitting a written request stating the reason for the request to the board within
3 30 days after receipt of the notice or order. If a hearing is requested within the 30-day period, the permit may
4 not be revoked and the bond may not be forfeited until a final decision is made by the board.

5 (3) If an operator fails to pay the fee or file the report required under [section 13], the department shall
6 serve notice of this failure, by certified mail or personal delivery, on the operator. If the operator does not comply
7 within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate the
8 permit upon compliance.

9
10 **NEW SECTION. Section 27. Conservation districts -- authority.** (1) Nothing in [sections 1 through
11 27] precludes a conservation district from exercising its authority pursuant to Title 76, chapter 15.

12 (2) If a conservation district requires a performance bond for a coal bed methane operation, the
13 conservation district shall coordinate its requirements with those of the department.

14
15 **Section 28.** Section 70-30-102, MCA, is amended to read:

16 **"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent
17 domain may be exercised for the following public uses:

- 18 (1) all public uses authorized by the government of the United States;
19 (2) public buildings and grounds for the use of the state and all other public uses authorized by the
20 legislature of the state;
21 (3) public buildings and grounds for the use of any county, city, town, or school district;
22 (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the
23 inhabitants of any county, city, or town;
24 (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen,
25 or straighten stream channels;
26 (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
27 (7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county,
28 city, or town or the inhabitants of a county, city, or town;
29 (8) acquisition of road-building material as provided in 7-14-2123;
30 (9) stock lanes as provided in 7-14-2621;

- 1 (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- 2 (11) airport and landing field purposes as provided in 7-14-4801, 67-2-301, 67-5-202, 67-6-301, and Title
- 3 67, chapters 10 and 11;
- 4 (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;
- 5 (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- 6 (14) county recreational and cultural purposes as provided in 7-16-2105;
- 7 (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- 8 (16) county cemetery purposes as provided in 7-35-2201, cemetery association purposes as provided
- 9 in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- 10 (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- 11 (18) public assistance purposes as provided in 53-2-201;
- 12 (19) highway purposes as provided in 60-4-103 and 60-4-104;
- 13 (20) common carrier pipelines as provided in 69-13-104;
- 14 (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- 15 (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided
- 16 in 75-10-720;
- 17 (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- 18 (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle
- 19 wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- 20 (25) water conservation and flood control projects as provided in 76-5-1108;
- 21 (26) acquisition of natural areas as provided in 76-12-108;
- 22 (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- 23 (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- 24 (29) conservancy district purposes as provided in 85-9-410;
- 25 (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and
- 26 railroads;
- 27 (31) canals, ditches, flumes, aqueducts, and pipes for:
- 28 (a) supplying mines, mills, and smelters for the reduction of ores;
- 29 (b) supplying farming neighborhoods with water and drainage;
- 30 (c) reclaiming lands; and

- 1 (d) floating logs and lumber on streams that are not navigable;
- 2 (32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must
3 possess a public use demonstrable to the district court as the highest and best use of the land.
- 4 (33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;
- 5 (34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines,
6 mills, and smelters for the reduction of ores;
- 7 (35) an occupancy in common by the owners or the possessors of different mines of any place for the
8 flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of
9 ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However,
10 the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of
11 the land.
- 12 (36) private roads leading from highways to residences or farms;
- 13 (37) telephone or electrical energy lines;
- 14 (38) telegraph lines;
- 15 (39) sewerage of any:
- 16 (a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or
17 unincorporated;
- 18 (b) settlement consisting of not less than 10 families; or
- 19 (c) public buildings belonging to the state or to any college or university;
- 20 (40) tramway lines;
- 21 (41) logging railways;
- 22 (42) temporary logging roads and banking grounds for the transportation of logs and timber products
23 to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However,
24 the grounds of state institutions may not be used for this purpose.
- 25 (43) underground reservoirs suitable for storage of natural gas;
- 26 (44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath
27 or upon the surface of property where the title to the surface vests in others. However, the use of the surface
28 of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or
29 overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may
30 not be exercised for this purpose.

1 (45) projects to restore and reclaim lands that were;
 2 (a) strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter
 3 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands; or
 4 (b) affected by coal bed methane operations and not reclaimed in accordance with [sections 1 through
 5 27]."
 6

7 **Section 29.** Section 75-1-110, MCA, is amended to read:

8 **"75-1-110. Environmental rehabilitation and response account.** (1) There is an environmental
 9 rehabilitation and response account in the state special revenue fund provided for in 17-2-102.

10 (2) There must be deposited in the account:

11 (a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds
 12 or contributions designated for deposit to the account;

13 (b) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, 82-4-424,
 14 ~~and~~ 82-4-426, and [section 5]; and

15 (c) interest earned on the account.

16 (3) Money in the account is available to the department of environmental quality by appropriation and
 17 must be used to pay for:

18 (a) reclamation and revegetation of land affected by mining activities, research pertaining to the
 19 reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

20 (b) reclamation and revegetation of unreclaimed mine lands for which the department may not require
 21 reclamation by, or obtain costs of reclamation from, a legally responsible party;

22 (c) remediation of sites containing hazardous wastes or hazardous substances for which the department
 23 may not recover costs from a legally responsible party; or

24 (d) response to an imminent threat of substantial harm to the environment, to public health, or to public
 25 safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

26 (4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the
 27 account until spent or appropriated by the legislature."
 28

29 **NEW SECTION. Section 30. Codification instruction.** [Sections 1 through 27] are intended to be
 30 codified as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [sections 1

1 through 27].

2

3 NEW SECTION. **Section 31. Severability.** If a part of [this act] is invalid, all valid parts that are
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
5 the part remains in effect in all valid applications that are severable from the invalid applications.

6

- END -